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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

LEONARD D. DUBOFF,

Plaintiff,

v.

PLAYBOY ENTERPRISES
INTERNATIONAL, INC., a Delaware
corporation, and MICHAEL GROSS, an
individual,

Defendants.

Case No. 06-CV-358-HA

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S OBJECTIONS TO
DEFENDANT'S MOTION FOR
ATTORNEY FEES AND COSTS

Plaintiff opposes defendant's motion for attorney fees and costs on the grounds that the number of hours was not reasonably necessary to the litigation and that the use of block billing for various tasks described on Defendants' invoices do not allow for adequate review of the reasonableness of the time spent on the tasks.

The work for which Defendants seek to recover attorney fees encompasses the period

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following the Defendants' transfer of responsibility for defense of the matter to the Dunn Carney firm. At that point in time, two motions were pending before the Court: (1) Defendants' special motion to strike and (2) Plaintiff's motion to strike the Defendants' motion. All the briefing had been completed on the Defendants' motion and a response to the Plaintiff's was due.

It should be noted that the necessary work performed by the Dunn Carney firm consisted of two tasks, drafting a three-page opposition to Plaintiff's motion to strike the Defendants' special motion and the drafting of the present motion for attorney fees and costs. Nonetheless, the Dunn Carney firm has spent 50.4 hours of attorney time and 6.3 hours of paralegal time on the matter. They seek recovery of \$16,383 in attorney fees and an costs of \$130.11 for a total of \$16,513.11. This amount is unreasonable considering the nature of the work and the level of skill needed to perform the services properly.

I. The amount of hours spent on the matter are unreasonable.

It is the fee claimant's burden to demonstrate that the number of hours spent was reasonably necessary to the litigation and that counsel has made a good faith effort to exclude from the fee request hours that are excessive, redundant or otherwise unnecessary. *Hells Canyon Preservation Council v. United States Forest Service*, Civ. No. CV-00-755-HU, page 30 (D. Or. August 18, 2004)(citing *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). The 28.7 hours that Dunn Carney spent reviewing the file prior to October 6, 2006, when work began on the response to Plaintiff's motion to strike, is excessive. Declaration of Robert S. Dorband at ¶ 4. Note that about 12.5 hours were spent reviewing the file on and after October 6, 2006 and that even this amount is more than sufficient to understand the nature of the case and to prepare a response to a procedural motion. The amount of the excessive fees associated with file review that should be

disallowed is \$7,976.00. *Id.*

The following entries appear to be for unnecessary duplicate work because they are directed to the same task, *i.e.*, evaluating whether Plaintiff's confidential client information had been used to prepare the Defendants' Special Motion to Strike.

| | | | | |
|----------|---|-----|------|-----------|
| 9/25/06 | Analyze and examine pleadings and materials on file to determine if they are public record | DPR | 3.50 | \$1032.50 |
| 10/11/06 | Analyze all materials and pleadings filed in this case in preparation of declaration that no confidential information is contained in the documents | DPR | 2.70 | \$796.50 |

The entry of October 11, 2006 appears to be contemporaneous with the task of responding to Plaintiff's motion to strike and thus is more reasonably associated with a necessary task.

Therefore, the fees associated with the September 25, 2006 entry of \$1032.50 should be disallowed.

II. Fees for tasks described in block billing should be disallowed.

This Court has long disapproved block billing, in which several different tasks are grouped and billed in one large block of time. *See Hells Canyon Preservation Council v. United States Forest Service*, Civ. No. CV-00-755-HU, pages 26–27 (D. Or. August 18, 2004). Block-billed entries of three or more hours are to be disallowed in their entirety if they contain two or more tasks that could have taken anywhere from a small to a substantial amount of time. *Id.* The following entries were blocked billed in such a manner:

| | | | | |
|---------|--|-----|------|------------|
| 8/29/06 | Review Davis Wright Tremaine file; outline defense plan and budget for client; conference with David Rossmiller regarding his role | THT | 3.40 | \$1,309.00 |
|---------|--|-----|------|------------|

| | | | | |
|----------|---|-----|------|-----------|
| 9/25/06 | Analyze and examine pleadings and materials on file to determine if they are public record | DPR | 3.50 | \$1032.50 |
| 9/26/06 | Review file and outline action; draft affidavits for H. Shapiro, Duane Bosworth, and David Rossmiller | LT | 6.30 | \$882.00 |
| 9/29/06 | Continued analysis of pleadings and Anti-SLAPP caselaw | DPR | 3.50 | \$1032.50 |
| 10/11/06 | Evaluate cases cited by Plaintiff in motion to strike defendants' motion and write response brief | DPR | 3.10 | \$914.50 |

The total amount of fees associated with block-billed entries is \$5,170.50.

All of the entries listed above except for the October 11, 2006 entry are encompassed by the entries discussed in the previous section for time unreasonably spent on the matter or duplicative work. Assuming that the Court finds that the fees of \$7,976.00 for time unreasonably spent and the fees of \$1032.50 for duplicate work should be disallowed, then an additional \$914.50 of fees should be disallowed for block billing. The total amount of attorney fees that should be disallowed is thus \$9,923.00

Dated: July 26, 2007

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